

**Amendments to the Drawings:**

Three (3) sheets of replacement Drawings are attached in response to the objection in the Office Action.

## **REMARKS**

This amendment is submitted in response to the Office Action dated July 8, 2011 and the telephonic interview that was held on January 4, 2012. Reconsideration and allowance is respectfully requested in view of the remarks made below.

### ***1. The Telephonic Interview***

Applicant would like to thank Examiner Gravini for the courtesies that were extended to the undersigned and the assignee's corporate intellectual property counsel, Robert Z. Evora, in the telephonic interview that was held on January 4, 2012.

During the interview, Examiner Gravini indicated that the §112 rejection could be overcome by identifying on the record the corresponding structure that is recited in the specification for the "mounting means" and "location means" set forth in claim 29.

The prior art rejections were also discussed during the interview. For reasons that are set forth at length below, Mr. Evora and the undersigned argued that the §102 rejection of claims 19 and 20 based on U.S. patent 4,238,035 to Kassanchuk ("Kassanchuk") was legally flawed and should be withdrawn. In addition, Applicant's representatives pointed out why the §103 rejection of claims 9 and 10 based on the combination of British patent specification 160,098 to Slipp ("Slipp") and Kassanchuk was unsupported by existing law. Those arguments are also repeated at length below for the record. Examiner Gravini agreed with Applicant's representatives with respect to those rejections and agreed to withdraw them upon presentation of a written response.

The §102 rejection of claims 19 and 20 based on U.S. Patent 2,197,178 to Gates was not discussed during the interview, but is addressed at length below.

The requirement that Applicant submit a copy of the printed patent was also briefly discussed. The undersigned pointed out that the original ribbon copy of the patent was hand-

delivered to the USPTO several years ago, but agreed to submit a copy of the printed patent electronically for the record.

## **2. *The §112, Second Paragraph Rejection***

Claim 29 was rejected in the Office Action under §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action took the position that the “mounting means” and the “location means” set forth in claim 29 were both unsupported by sufficient structure in the specification. Again, it was agreed during the telephonic interview that this rejection could be satisfied by identifying the corresponding structure on the record.

Applicant identifies the structure corresponding to the “mounting means” as that which is disclosed in column 3, line 55 through column 4, line 5 of the printed copy of U.S. Patent 6,038,784. This includes the axles 22, 24, 28, 30 and the corresponding journals 38 that are depicted in all four figures of the patent.

The structure corresponding to the “location means” was identified by the Board of Appeals on pages 12-13 of the Decision on Appeal (Appeal 2007-0826) in co-pending reissue patent application 09/902,965, which shares the same specification and drawings as the present application. The portions of the specification that were identified by the Board of Appeals correspond to column 4, lines 6-28 of the printed copy of U.S. Patent 6,038,784. Figure 4 also depicts structure that is part of the location means.

Applicant respectfully submits that the corresponding structure for the “mounting means” and the “location means” was described in the specification in specific terms and that a person having ordinary skill in the art could have identified the claimed structure from that description. Accordingly, §112, second paragraph is satisfied. See *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1382. Applicant also notes that the Board of Appeals did not

suggest that any ambiguity existed with respect to either of these claim limitations when addressing the appeals in the present application and in co-pending application 09/902,965.

Accordingly, withdrawal of the §112, second paragraph rejection is respectfully solicited.

### **3. *The §102 Rejections***

Claims 19 and 20 were both rejected under 35 U.S.C. §102(b) based on U.S. Patent 4,238,035 to Kassanchuk. Claims 19 and 20 were also rejected under §102(b) based on US patent 2,197,178 to Gates (“Gates”). Both of these rejections are respectfully but strenuously traversed, for the reasons set forth below.

#### **A. Kassanchuk**

##### **i. Kassanchuk Does Not Disclose A Tray**

The USPTO is charged with construing words in a claim to have their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say. “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 75 USPQ2d 1321, 1326< (Fed. Cir. 2005) (en banc)<sup>1</sup>. Dictionary definitions may be used in conjunction with the intrinsic evidence in the prosecution file history to help determine the ordinary and customary meaning of words to those skilled in the art. In construing claim terms, the general meanings gleaned from reference

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<sup>1</sup> See MPEP 2111.01, titled “Plain Meaning.”

sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.); *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003).

Dictionary definitions for “tray”, “rack” and “face” are provided below.

A “**tray**” is defined in the Merriam-Webster dictionary as “an open receptacle with a flat bottom and a low rim for holding, carrying, or exhibiting articles,” emphasis added. (<http://www.merriam-webster.com/dictionary/tray>, attached herewith).

A “**rack**” is defined in the Merriam-Webster dictionary) as “a framework, stand, or grating on or in which articles are placed,” emphasis added. (<http://www.merriam-webster.com/dictionary/rack>, attached herewith).

A “**face**” is defined in the Merriam-Webster dictionary) as “to make the surface of ... flat or smooth,” emphasis added.

(<http://www.merriam-webster.com/dictionary/face>, attached herewith).

These definitions are consistent with the specification of U.S. Patent 6,038,784, as the tray 12 of the preferred embodiment has a flat bottom and a low rim, the rack has articles placed thereon, and the upper face 16 of the tray 12 is substantially flat and smooth. Accordingly, the plain meaning of the terms should govern. Giving claims the

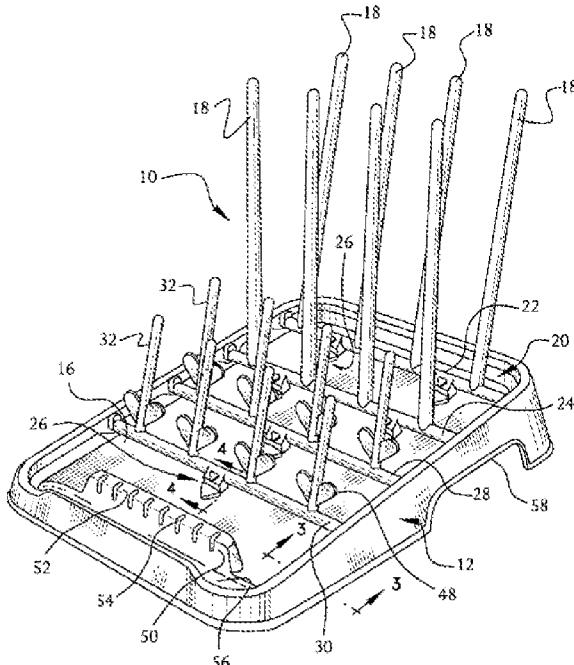
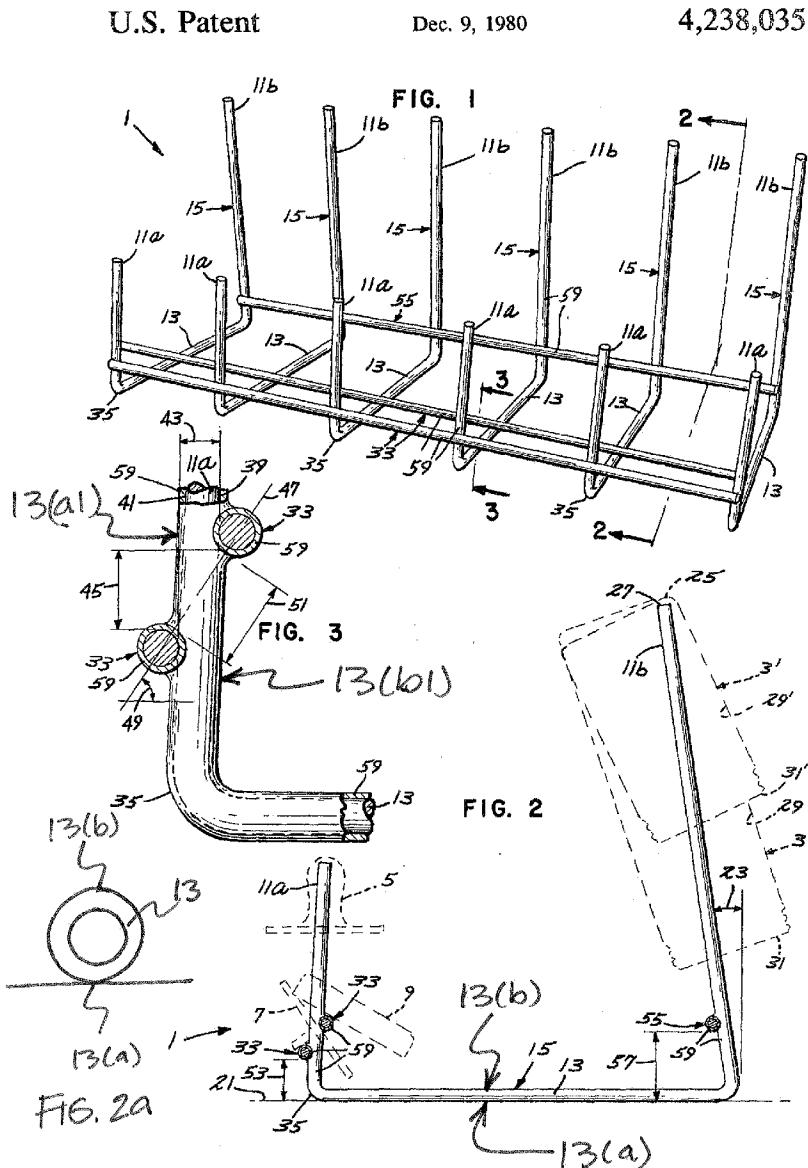


FIG. 1

broadest reasonable interpretation is not an excuse for blatant disregard of the language of the claims. See MPEP §2111.01.

Kassanchuk relates to a unitary construction rack 1 consisting of a framework of bars on which various components of a baby bottle assembly can be dried off. The Office Action states that Kassanchuk comprises: “a tray having a bottom face [13a in FIG 2 and 2A reproduced below] (underside of items 13) that is adapted to be supported by an underlying surface and an upper face [13b in FIG 2 and 2A reproduced below] (upperside of items 13),” Emphasis added. Applicants respectfully disagree.

Taking the dictionary definition for a "tray" and "face" above, Kassanchuk's rack absolutely fails to describe a tray having a bottom face. There is no surface that is flat or smooth as the plain meaning of the term requires. As shown above in illustrative partial section



view FIG. 2a, Kassanchuk does not teach or suggest a tray (open receptacle) with a bottom face (or flat bottom), let alone any low rim for holding, carrying, or exhibiting articles. Applicants claims positively recite a tray in singular form, and one of ordinary skill in the art would not understand a plurality of spaced apart rods 15 (as shown in Kassanchuk) to define a solid tray (singular) being an open receptacle with a flat bottom.

Even assuming *arguendo* that the Office Action interpretation of Kassanchuk is possible, item 13(a) would be a bottom face of the rod 13, and item 13(b) would be an upper-face of the rod 13 of the purported tray 13. Kassanchuk fails to disclose or show a single tray having an open receptacle, let alone with a flat bottom. To the contrary, the lower edge of the circular rod 13 shown in the figures does not define an open receptacle or a flat bottom. If anything, only a point connection is made at the Office Action's purported bottom face 13(a) of the rod 13. Even further confusing, asserting in the Office Action that the plurality of rods 13 defines a tray - which Applicant firmly disagrees – an open receptacle with a bottom is lacking. Even yielding to the broadest illogical interpretation in the Office Action, Kassanchuk fails to define a tray with a flat bottom. For at least this reason as well, Kassanchuk also fails to teach or suggest a tray as recited in independent claim 19. Giving claims the broadest reasonable interpretation is not an excuse for blatant disregard of the language of the claims. See MPEP §2111.01

***To establish anticipation, a single cited art document must disclose every claim feature.***  
Kassanchuk clearly fails to teach or suggest all of the features recited in claim 19. Claim 19 also recites:

a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face;

bottle support means for supporting a baby bottle; and

disk holding means, connected to said upper face of said tray, for

***holding baby bottle disks*** in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are stored in a safe manner as a location that is convenient to a location at which baby bottles are being dried.

As mentioned above, by definition, Kassanchuk fails to disclose a "tray having a bottom face that is adapted to be supported by an underlying surface and an upper face."

ii. Kassanchuk Does Not Disclose a Bottle Support Means

MPEP § 1.75(i) states "where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation." Emphasis added. Claim 19 clearly sets forth at least 3 distinct separate elements. That is: 1) a "tray"; 2) "bottle support means" and 3) "disk holding means." As shown reproduced above, each of the elements is separated by a line indentation to indicate their distinct separable differences. To establish anticipation, a single cited art document must disclose each and every claim limitation. In its interpretation, the Office Action blatantly disregards this mandatory requirement and attempts to use a single discrete element (in Kassanchuk) to anticipate more than one discrete element in Applicant's recited claims.

Moreover, when the limitation involves a means plus function clause, proper interpretation requires that such a claim "shall be construed to cover the corresponding structure, material or acts described in the specification and equivalents thereof." *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990); *In re Iwashashi*, 888 F.2d 1908, 1912 (Fed. Cir. 1989). Thus, in order to meet a means plus function limitation, the prior art "must (1) perform the identical function recited in the means limitation and (2) perform that function using the structure disclosed in the specification or an equivalent structure." *Carroll Touch, Inc. v. Electro Mechanical Sys., Inc.* 15 F.3d 1573, 1578 (Fed. Cir. 1993).

Claim 19 requires “bottle support means for supporting a baby bottle.” The Office Action relies on element 13 (the purported U-shaped rod) angled into rod 11b to provide the bottle support means. Applicant disagrees with this interpretation as the specification clearly describes the bottle support means distinct from the tray. Kassanchuk fails to teach a separate and distinct separate bottle support means, and one of ordinary skill in the art would not define the purported tray 13 also as a separate and distinct bottle support means. The Office Action fails to address any separate bottle support means for supporting a baby bottle that is different from the asserted tray 13 (as defined by the Office Action).

iii. No Disk Holding Means “Connected To” Upper Face of Tray

Likewise, Kassanchuk fails to teach or suggest “disk holding means, *connected to said upper face of said tray, for holding baby bottle disks.*”

The Board of Appeals identified the structure in Applicant specification that corresponds to the “disk holding means” limitation on page 20 of the Decision on Appeal. This corresponds to col. 4, lines 39-53 of the originally issued ‘784 patent, which reads as follows:

According to another important aspect of the invention, apparatus 10 further includes a disk holding system 50 for holding baby bottle disks in a location that is isolated from areas of the tray 12 in which liquid may collect. This allows baby bottle disk to be dried and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried. In the preferred embodiment, disc holding system 50 includes an upstanding boss member 52 that projects upwardly from the upper face 16 of tray 12 and has a plurality of disc receiving slots 54 defined therein. Boss member 52 and slots 54 are raised with respect to an underlying reservoir 56 that is located in the forward portion of tray 12. As an added benefit, the reservoir space also acts as a finger space area for a user to get his/her fingers beneath the disc members for lifting them out after drying.

In the Decision on Appeal, the Board applied the *Donaldson* doctrine, holding that a proper interpretation of disk holding means would require some type of drainage means, such as slots, as “laying a wet, flat bottle disk on a flat surface would cause liquid to collect around

and/or under the disc unless the flat surface had some sort of drainage means.” *See* Decision on Appeal, page 21.

The Office Action states that Kassanchuk provides “disk holding means (7, figs. 2 and 3, col. 3, lines 26-33), connected to said upper face of said tray, for holding baby bottle disks.” Applicant adamantly disagrees with this interpretation. The Office action analogizes the disk holding means to be the combined horizontal rods 33 positioned on opposite sides of the unitary tray 13/11a, as shown in FIGS. 2 -3. Applicant’s claim 19 states that the disk holding means is connected to the “upper face” of the tray, not the lower face (as rationalized by the Office Action)!

The Office Action is asserting the upper face of the tray 13 to be element 13(b). That would mean that the both (otherwise the disks could not be “held” by a single rod 33 disposed on the purported upper face) of the horizontal rods 33 (disk holding means) would have to be connected to the upper face 13(b); i.e., to one side (connected to the upper face) of the tray 13/11a. This is absolutely not the case, and to do so would clearly destroy the invention in Kassanchuk since it relies on the two rods 33 straddling the tray/rod 13 in FIG. 3 to provide the spacing required to support the disk 7. Compounding this questionable interpretation even further, it would mean that the right side of the purported tray/rod 13 is the upper face 13(b1) of the tray 13 (which if the tray 13 is at a 90 degree angle it would not be able to collect any water, in opposition to recited claim 19); and the left side of the purported tray/rod 13 is the lower face 13(a1) of the tray 13. Then according to the recited claim language, only the horizontal rod 33(b) to the right of the tray/rod 13 would be the disk holding means as it is “connected to” the purported upper face 13(b1) – not horizontal rod 33(a1). According to this flawed reasoning, horizontal rod 33(b) alone must be able to support baby bottle disks without rid 33(a). This is impossible since both of the horizontal rods 33(a) and 33(b) are essential to hold the baby bottle disks as shown in Kassanchuk’s FIG. 2. Giving claims the broadest reasonable interpretation is

not an excuse for blatant disregard of the language of the claims. See MPEP §2111.01

For at least the reasons discussed above, Applicants respectfully submit that Kassanchuk fails to anticipate the subject matter of independent claim 19, and 20 which depends therefrom. Applicants respectfully submit that the rejection of claims 19-20 under 35 USC §102(b) should be withdrawn.

#### **B. Gates**

Claims 19 and 20 stand rejected under 35 U.S.C. §102(b) over U.S. Patent 2,197,178 to Gates. This rejection is also respectfully traversed.

As mentioned above, MPEP § 1.75(i) states “where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation.” Emphasis added. Claim 19 clearly sets forth three discrete separable elements: 1) a “tray”; 2) “bottle support means” and 3) “disk holding means.” Gates also fails to disclose each and every claim feature and the Office Action blatantly disregards this mandatory requirement and attempts to use a single discrete element (in Gates) to anticipate more than one discrete element in Applicant’s recited claims. The Office Action points to the trough 15 as both the “bottle support means” and the “disk holding means.” However, claim 19 defines the “bottle support means” and the “disk holding means” as two separate elements. For at least this reason, Gates fails to anticipate claim 19.

Claim 19 recites:

19. An apparatus for drying and storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face;  
bottle support means for supporting a baby bottle; and

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried.

i. Bottle Support Means

The Office Action limited its articulation of the “bottle support means” to “bottle support means 15 for supporting a baby bottle (figure 1, page 2 line 6)”. However a close review of the Gates reference reveals that it fails to make a *prima facie* case of anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 19 explicitly recites “bottle support means for supporting a baby bottle.” This means plus function claim limitation must be interpreted in light of the structure disclosed in the specification as required by the *In re Donaldson* decision. However, the Office Action has failed to do this. The Office Action fails to properly interpret the means-plus-function claim element since it does not point out what the “bottle support means” or its technical equivalents are as disclosed in the ‘784 patent. Instead, the Office Action has summarily concluded in an improper manner that “bottle support means” is anticipated by the trough 15 in Gates.

The proper means-plus-function claim construction under the §112 ¶6 statutory requirements requires a careful examination of the disclosure in the ‘784 patent. For example, lines 3-5 in column 3 of the ‘784 patent describes the bottle support means:

Each of the pegs 18 is sized and arranged so as to be able to support an article, such as a baby bottle, after washing and rinsing.

Thus, a proper means-plus-function claim construction of the “bottle support means” for

examination purposes would limit its scope to at least the “the pegs 18” for supporting “a baby bottle” and technical equivalents of that structure. Such structure positions the baby bottle substantially vertically so that it can drain.

In stark comparison, the Gates reference discloses a curvilinear “trough 15” upon which articles are placed. In use, heated air is forced downwardly to the bottom of the base1, under the articles, and over the top of the articles placed in the trough 15 of the rack 16. The Gates reference is clearly limited in its disclosure to forcing air around an article lying in the trough 15. Even though no bottle is disclosed by Gates anywhere, in the Gates disclosure it makes absolutely no sense to place a bottle in the trough 15. For argument sake, even if a bottle was to be disposed in the trough 15 on its side (i.e., the outer curve of a bottle lying against the curvilinear frame of the trough 15), Gates teaches against drying the inside of the bottle, and instead specifically teaches blowing heated air over the outer surface of the article and not within the article itself. This is because the Gates drying apparatus is solely intended for “blowing heated air over and around the dishes and silverware” disposed in the drying apparatus. Gates fails to disclose or even remotely suggest the use of baby bottles. Using the trough 15 for a baby bottle greatly differs from the intended use of Gates in its intended purpose from the “baby bottles” that are positively set forth in independent claim 19.

Particularly in light of the appropriate §112 ¶6 statutory claim construction that is required by the *In re Donaldson* decision, Appellant respectfully submits that the Gates reference fails to anticipate the “bottle support means for supporting a baby bottle” as explicitly recited in claim 19 and interpreted from the Applicant’s written description. One of ordinary skill in the art would not logically think to place a bottle standing upright in a curvilinear trough 15 in an unstable slippery wet environment without providing a peg or support of some sort to support a bottle upright so that fluid therein could drain downward and out of the bottle by gravity. Gates is not designed to function in that manner.

ii. Disk holding means

In addition, independent claim 19 explicitly recites “disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried.” The Office Action clearly fails to properly interpret this means-plus-function claim element *In re Donaldson* decision because it does not actively consider and point out what the “disk holding means” or its technical equivalent is as disclosed in the ‘784 patent. Instead, the Examiner has concludes that the same identical element 15 (the trough, or purported bottle support means) is also coincidentally now the “disk holding means” as well. Again, Applicant’s respectfully disagree.

As stated above, a proper means-plus-function claim construction under the §112¶6 statutory requirements requires a careful examination of the disclosure in the ‘784 patent. Lines 39 through 53 in column 4 of the ‘784 patent describe the “disk holding system 50” with respect to FIGURE 1. The disk holding system 50 “hold[s] baby bottle disks in a location that is isolated from area of the tray 12 in which liquid may collect” and “includes an upstanding boss member 52 that projects upwardly from the upper face 16 of tray 12 and … a plurality of disc receiving slots 54 defined therein.” Thus, an appropriate means-plus-function claim construction of the “disk holding means” is necessarily limited to the “disk holding system 50” that is disclosed in the specification and its technical equivalents.

In stark comparison, the Gates reference asserts that the trough 15 is also a “disk holding means.” Based upon the appropriate §112¶6 statutory claim construction, Appellant respectfully submits that the Gates reference fails to anticipate the “disk holding means” as it is set forth in claim 19.

Therefore, Applicant submits that claim 19 is allowable for the above reasons.

Claim 20:

Furthermore, the Office Action defines the “boss” recited in claim 20 as one of the frame member rods in the trough 15. Applicant disagrees.

The definition of BOSS according to Merriam-Webster online is:

1

a : a protuberant part or body <a boss of granite> <a boss on an animal's horn> b : a raised ornamentation : stud c : an ornamental projecting block used in architecture

2

: a soft pad used in ceramics and glassmaking

3

: the hub of a propeller

The frame member rods in Gates are not upstanding boss members that are raised from the upper face of the tray as claim 19 requires. In fact, the frame member rods are completely disconnected from and do not come into contact at all with the tray 1 as shown in FIGS. 1 and 2 in Gates and one of ordinary skill in the art would not make this illogical interpretation.

In addition, the frame member rods do not have “a plurality of disk-receiving slots defined in the boss member” as recited in claim 20. The frame member rods are shown and described as solid rods void of any slots disposed therein.

For at least the reasons discussed above, Applicants respectfully submit that Gates fails to anticipate the subject matter of independent claim 19, and 20 which depends therefrom. Applicants respectfully submit that the rejection of claims 19-20 under 35 USC §102(b) should also be withdrawn.

#### **4. The §103 Rejections**

Claims 9-10 stand rejected under 35 USC §103(a) over Slipp (GB 160,098) in view of U.S. Patent 4,238,035 to Kassanchuk. Claims 19-20 stand rejected under 35 USC §103(a) over Slipp (GB 160,098) in view of U.S. Patent 4,238,035 to Kassanchuk. Both of these rejections are respectfully but strenuously traversed, for the reasons set forth below.

Independent claim 9 requires a plurality of pegs that extend outwardly from the upper face of the tray, each of the pegs being sized and arranged so as to be able to support an article. It further requires disk holding means, connected to the upper face of the tray, for holding baby bottle this in a location that is isolated from areas of the tray in which liquid may collect.

Independent claim 19 recites a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face. It further requires bottle support means for supporting a baby bottle. In addition, claim 19 requires disk holding means, connected to the upper face of the tray, for holding baby bottle this in a location that is isolated from areas of the tray in which liquid may collect, so that baby bottle discs stored in a safe manner any location that is convenient to a location at which baby bottles are being dried.

As the Office Action admits, the Slipp reference does not disclose disk holding means. The rejection relies upon the Kassanchuk reference as a teaching of disk holding means. As was discussed during the telephonic interview, the disk holding means that is set forth in both independent claims 9 and 19 is a separate element from the plurality of pegs that are set forth in claim 9 and the bottle support means that are set forth in claim 19. Figure 2 of Kassanchuk shows a baby bottle disk 7 balanced between a pair of transverse members 33 that are connected to a plurality of upstanding elongated wire members 11a. The only way that such a structure could be physically combined with the apparatus that is disclosed in the Slipp reference would have been to mount the transverse members 33 directly to the pivotable pegs c, d that are shown in Figures

3 and 4 of Slipp. However, doing this would destroy the functionality of the pegs c, d for the purpose of holding a bottle, particularly if a baby bottle disk was mounted between the cross elements. Moreover, mounting such cross elements on the pegs c, d of Slipp would not result in a disk holding means that is an independent element from the pegs, in the case of claim 9, or the bottle support means in the case of claim 19, as proper construction of those claims would require.

Accordingly, as was agreed during the interview, the rejection of claims 9-10 and 19-20 is flawed and should be withdrawn.

##### **5. *The Objections to the Reissue Declarations***

The Office Action takes the position that the reissue declaration filed July 2, 2004 is defective because it does not specifically identify any error that supports the reissue application. Specifically, the errors that were set forth in paragraphs (a)-(f) were not considered sufficient to cause the patent to be wholly or partly inoperative for invalid for reasons under 35 U.S.C. §251. The objection further took the position that there was no description of any errors in the original patent claims with respect on patentability over the prior art or under 35 USC §112.

Applicant respectfully traverses the objection. The reissue declaration that was filed on July 2, 2004 was a supplemental declaration. According to MPEP 1414.01, a supplemental reissue oath or declaration must state that every error “which was corrected in the reissue application not covered by the prior oath(s)/declaration(s) submitted in the application arose without any deceptive intention on the part of the applicant.” (emphasis added). Accordingly, there is no requirement that the supplemental oath or declaration repeat what was already averred to in a previously filed oath or declaration.

In this case, the declarations that were filed on July 11, 2001 and July 10, 2002 stated that the original patent was partly inoperative for failure to claim specific combinations of elements

that were individually set forth in subparagraphs 6(a)- 6(f). Applicant respectfully submits that the averments in the previously filed declarations are adequate support for a reissue patent application under 35 U.S.C. §251, and respectfully requests withdrawal of the objection to the declaration.

**6. *The Amended Drawing***

In response to the objection to the drawings, Applicant is submitting herewith three (3) replacement sheets bearing Figures 1-4. The third replacement sheet bears amended Figure 4, which was submitted in the July 2, 2004 response. All of the replacement sheets include the other image elements from the original patent, which was required in the Office Action. Entry of the replacement sheets is respectfully requested.

**7. *Submission of Printed Copy of Patent***

As the undersigned promised during the interview, a copy of printed U.S. Patent 6,038,784 to Dunn is being electronically submitted herewith.

**8. *Disclosure of Litigation***

Pursuant to 37 C.F.R. §1.178, Applicant hereby brings to the attention of the USPTO that U.S. Patent No. 6,038,784, on which the present reissue patent application is based, is the subject of two litigations before the United States District Court, Central District of California, namely civil case nos. 2:00-cv-13137 and 2:00-cv-13138. These cases are currently administratively closed, subject to be re-opened upon motion if and when the reissue patent is granted.

**9. *Conclusion***

Applicant has made an earnest effort to place this application in condition for allowance. If Examiner Gravini feels that a telephone interview would expedite prosecution of this patent application, he or she is respectfully invited to telephone the undersigned at 215-599-0600.

Contact with the undersigned via electronic mail at [jknoble@patentwise.com](mailto:jknoble@patentwise.com) is hereby authorized<sup>2</sup> per MPEP 502.03.

Respectfully submitted,

*/John L Knoble/*

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<sup>2</sup> Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.